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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,350	10/24/2003	Daniel W. Tollenaar	2-5578-004	2710
803	7590	01/13/2006	EXAMINER	
STURM & FIX LLP 206 SIXTH AVENUE SUITE 1213 DES MOINES, IA 50309-4076			KATCHEVES, BASIL S	
			ART UNIT	PAPER NUMBER
			3635	

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/693,350	TOLLENAAR, DANIEL W.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Basil Katcheves	3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 42-113 is/are pending in the application.
- 4a) Of the above claim(s) 98-113 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 42-79 is/are allowed.
- 6) ☒ Claim(s) 80-97 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>8/29/05, 6/28/05</u>  | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

New claims 98-113 have been added by the applicant in the amendment dated 8/24/05. Claims 42-113 are pending.

#### ***Claim Objections***

Claim 42 is objected for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 42 recites a backing member for use with U studs, appearing to be a subcombination, but then positively claims the backing members connected to the U studs, appearing to be a combination. The examiner is considering the claim to be drawn to a combination backing members and U studs and is examined as such.

#### ***Election/Restrictions***

Newly submitted claim 98-113 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Studs having legs.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 98-113 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Applicant should also note that there is no support for stud legs in the specification and drawings.

***Double Patenting***

The terminal disclaimer dated 10/15/04 has been approved.

***Claim Rejections - 35 USC § 102***

**Claims 80-83, 87, 88 and 90-97 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 3,527,006 to Hanson.**

Regarding claim 80, Hanson discloses first and second backing members (fig. 2: 96 & 91), a first structure (fig. 2: 50) attached to the first backing and indirectly through studs 82 & 72 to the second backing member (fig. 2: 91). The backing members are spaced from each other (fig. 2: see gap adjacent 85) with two upright studs (fig. 2: 82 & 72) and the second backing member is capable of being disposed between the second stud (fig. 2: 72) and a third stud (fig. 1: see plurality of panel backing) and the second end of the first backing member (fig. 2: 96) is adjacent to the second stud (fig. 2: 72). The first substantially planar structure (fig. 5) is operatively attached to the backing members and spans therebetween (fig. 2: 31, 32, 61, 62), the substantially planar member being disposed in a plane substantially parallel (fig. 5: 28) to the plane of the backing members.

Regarding claim 81, Hanson discloses a second structure (fig. 2: 26), a plurality of backing panels (fig. 1) attached to a plurality of studs in the manner as indicated in fig. 2.

Regarding claim 82, Hanson discloses the use of metal for the first structure (column 1, lines 15).

Regarding claim 83, Hanson discloses the use of metal for the structure second(column 1, lines 15).

Regarding claim 87, Hanson discloses the studs as being made of metal (column 7, line 29).

Regarding claim 88, Hanson discloses the studs as having a U shape (fig. 2: 82).

Regarding claim 90, Hanson discloses a wall (fig. 1) having a plurality of metal studs (fig. 2: 82 & 72, and fig 1 where fasteners 97 & 92 are found throughout wall. Fig. 1 shows 5 pairs of studs behind panels). Hanson also discloses a first backing member (fig. 2: 96) spaced between a first stud (shown behind panels of fig. 1, not shown in fig. 2, but would be found in fig. 2 at left end of 96) and a second stud (fig. 2: 82). First and second backing members shown in fig. 1, 95 and 90 located between first and second studs (where fastener holes are located in fig. 1) and the second backing is located between second and third studs (where adjacent set of fastener holes are located in fig. 1) and a first structure (fig. 2: 52) connected directly to a backing member and indirectly connected to another backing member. The first substantially planar structure (fig. 5) is operatively attached to the backing members and spans therebetween (fig. 2: 31, 32, 61, 62), the substantially planar member being disposed in a plane substantially parallel (fig. 5: 28) to the plane of the backing members.

Regarding claim 91, Hanson discloses a fourth stud (fig. 1: see 10 sets of stud fasteners) and multiple backing members (fig. 1: 95 & 90 and adjacent unlabelled panels) and a second structure (fig. 2: 26) attached directly to one backing member and indirectly to a second backing member.

Regarding claim 92, Hanson discloses the first structure as attached to a second stud (fig. 2: 82).

Regarding claim 93, Hanson discloses the first structure (fig. 2: 52) as attached to a first stud (fig. 1: shown behind wall 95, and not shown in fig. 2: at left end of backing 96).

Regarding claim 94, Hanson discloses the second structure (fig. 2: 26) as attached to a third stud (fig. 2: 72).

Regarding claim 95, Hanson discloses the second structure (fig. 2: 26) as attached to a fourth stud (fig. 1: behind panels located where fastener holes are, fig. 2: not shown, at far right end of 26).

Regarding claim 96, Hanson discloses a plurality of studs (fig. 1: where stud fasteners 97 and 92 are located throughout wall, and fig. 2: 82 & 72), a plurality of backing members joined between pairs of studs (fig. 1: wall panels 95 & 90 and all adjacent panels in the wall) and spacers (fig. 2: 52 & 26) located between stud pairs and extending throughout the wall of fig. 1 which are directly attached to two backing members (fig. 2: 95 & 96 and indirectly attached to adjacent backing panels (fig 2: 90 & 91). The first substantially planar spacer (fig. 5) is operatively attached to the backing members and spans therebetween (fig. 2: 31, 32, 61, 62), the substantially planar

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member being disposed in a plane substantially parallel (fig. 5: 28) to the plane of the backing members.

Regarding claim 97, Hanson discloses the spacer (fig. 2: 52) as attached to a first stud (fig. 2: 82, and where fig. 1: 97 is), a second stud (fig. 2: not shown, but located at left end of 52), indirectly to a third stud (fig. 2: 72) and indirectly to a fourth stud (fig. 2: not shown, located at left end of 52 as mirror image of 72).

### ***Claim Rejections - 35 USC § 103***

**Claims 84-86 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,527,006 to Hanson.**

Regarding claim 84, Hanson does not specifically disclose the first and second backing members as being wood. However, Hanson discloses the backing members as being "wallboard or the like" (column 1, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using wood backing, as wood is similar to standard wallboard and commonly found in hardware stores.

Regarding claim 85, Hanson does not specifically disclose the first, second and third backing members as being wood. However, Hanson discloses the backing members as being "wallboard or the like" (column 1, line 13). It would have been obvious to one having ordinary skill in the art at the time the invention was made to

modify Hanson by using wood backing, as wood is similar to standard wallboard and commonly found in hardware stores.

Regarding claim 86, Hanson does not disclose sheet rock attached to the studs to cover the studs and backing members. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using a sheet rock layer, as sheet rock is commonly used to insulate walls in dwelling structures and adds greater sound and temperature absorbing properties to the walls.

**Claim 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 3,527,006 to Hanson in view of U.S. Patent No. 3,680,271 to Satchell.**

Regarding claim 89, Hanson discloses the use of bent metal studs but does not specifically disclose the use of galvanized metal studs. Satchell discloses a wall system comprised of galvanized metal studs (column 2, line 15). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Hanson by using galvanized metal studs, as disclosed by Satchell, in order to better prevent corrosion.

***Allowable Subject Matter***

Claims 42-79 are allowed as in the previous office action.



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***Response to Arguments***

Applicant's arguments filed 8/24/05 have been fully considered but pertain to newly amended claims. The rejection above addresses these claims.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Basil Katcheves whose telephone number is (571) 272-6846. The examiner can normally be reached on Monday-Friday from 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman, can be reached at (571) 272-6842.

BK

  
Basil Katcheves

1/6/06

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